

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOILING CRAB FRANCHISE CO., LLC,
a California limited liability company,

Plaintiff,

v.

KL BOILING CRAWFISH CORPORATION,
a Washington corporation; and NGUYEN
BOILING CRAWFISH CORPORATION, a
Washington corporation,

Defendants.

No. 2:21-cv-00293

COMPLAINT FOR TRADEMARK
INFRINGEMENT, UNFAIR
COMPETITION, AND
VIOLATION OF WASHINGTON
CONSUMER PROTECTION ACT

JURY DEMAND

Plaintiff Boiling Crab Franchise Co., LLC (“Plaintiff” or “The Boiling Crab”) brings this complaint against Defendants KL Boiling Crawfish Corporation and Nguyen Boiling Crawfish Corporation (collectively, “Boiling Crawfish”), and alleges as follows:

NATURE OF ACTION

1. This is an action for trademark infringement, trade name infringement, and unfair competition under Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114(1) and 1125(a), the common law of Washington, and the Washington Consumer Protection Act, RCW 19.86.101 *et seq.*, arising out of Boiling Crawfish’s use of marks, BOILING CRAWFISH, and trade dress designs that infringe The Boiling Crab’s trademark THE BOILING CRAB as well as trade dress designs.

PARTIES

2. Boiling Crab Franchise Co., LLC is a limited liability company organized and existing under the laws of the State of California, with its principal place of business located in Garden Grove, California. The Boiling Crab operates a chain of restaurants under the trademark THE BOILING CRAB, which The Boiling Crab has used since at least as early as 2004, and offers restaurant services and related products and services under the trademark THE BOILING CRAB.

3. On information and belief, defendant KL Boiling Crawfish Corporation is a corporation organized under the laws of the State of Washington, with its principal place of business at 4301 S. Meridian #3, Puyallup, Washington 98373.

4. On information and belief, defendant Nguyen Boiling Crawfish Corporation is a corporation organized under the laws of the State of Washington, with its principal place of business at 21022 108th Avenue SE, Kent, Washington 98031.

JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 1338(b), and 15 U.S.C. § 1121 because it arises under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* Jurisdiction over the Washington State law claims is also appropriate as these claims are so related to the claims brought under the Lanham Act that they form part of the same case or controversy, and hence fall within the scope of this Court's supplemental jurisdiction pursuant to 28 U.S.C. §§ 1338(b) and 1367.

6. This Court has personal jurisdiction over Defendants because, on information and belief, Defendants are providing, advertising, promoting, offering to sell and selling advertising, marketing, and sales promotion services using its infringing marks from this District and to consumers within this District.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), (c), and (d), because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in

1 this District and because Defendants are subject to personal jurisdiction in this District with
2 respect to the claims in issue.

3 **STATEMENT OF FACTS**

4 **THE BOILING CRAB'S *THE BOILING CRAB* CHAIN OF RESTAURANTS**

5 8. In 2004, The Boiling Crab, through its predecessor in interest, opened its first
6 restaurant under the trademark THE BOILING CRAB, in California.

7 9. Based on the huge popularity and success of The Boiling Crab's THE BOILING
8 CRAB restaurants, The Boiling Crab has since expanded its chain of THE BOILING CRAB
9 restaurants to include locations throughout the United States, including 15 THE BOILING
10 CRAB restaurants in California and THE BOILING CRAB restaurants in Dallas, Texas; Plano,
11 Texas; Las Vegas, Nevada; Honolulu, Hawaii; South Miami, Florida, and Washington, D.C.
12 The Boiling Crab is also actively exploring further expansion of its chain of THE BOILING
13 CRAB restaurants to additional locations throughout the United States and internationally.
14 Photos showing representative examples of the exterior signage used with The Boiling Crab's
15 THE BOILING CRAB restaurants are attached hereto as Exhibit A.

16 10. The Boiling Crab's THE BOILING CRAB restaurants offer a unique selection
17 of Louisiana-style seafood, including blue crab, oysters, Dungeness crab, shrimp, and crawfish
18 seasoned with THE BOILING CRAB restaurants' distinctive blends of spices and seasonings.
19 Customers of THE BOILING CRAB restaurants are also treated to a singularly enjoyable
20 dining experience that is characterized by the innovative food presentations, distinctive
21 restaurant decor, unique menus, and one-of-a-kind dining experience pioneered and provided
22 by The Boiling Crab's THE BOILING CRAB restaurants.

23 11. Further contributing to The Boiling Crab's distinctive appearance and appeal,
24 The Boiling Crab's unique past and present menus use a distinctive format, contain unique
25 content, and are distinctively printed in an eye-catching manner. True and correct copies of
26 past and current dine-in menus used at The Boiling Crab's THE BOILING CRAB restaurants
27 are attached hereto as Exhibit B. The Boiling Crab's restaurants have also consistently featured

1 THE BOILING CRAB branded bibs, cups, uniforms, t-shirts, signage and other collateral.
2 True and correct copies of illustrative examples of the THE BOILING CRAB restaurants'
3 branded collateral and signage, which are often incorporated into The Boiling Crab's
4 advertising and social media, are attached hereto as Exhibit C.

5 12. THE BOILING CRAB chain of restaurants has become extremely well known
6 and respected among consumers, who have come to associate The Boiling Crab's THE
7 BOILING CRAB trademarks (collectively, the "TBC Marks") with The Boiling Crab's THE
8 BOILING CRAB restaurants and the one-of-a-kind dining experience that The Boiling Crab
9 pioneered and provides. The Boiling Crab's THE BOILING CRAB restaurants have also
10 received unsolicited attention from, and positive recognition by, the media, which has further
11 contributed to consumers' widespread recognition of The Boiling Crab's THE BOILING
12 CRAB restaurants.

13 13. Additionally, The Boiling Crab has expended considerable time, effort, and
14 money promoting and advertising its chain of THE BOILING CRAB restaurants, further
15 contributing to the recognition and success of THE BOILING CRAB chain of restaurants.
16 Today, The Boiling Crab continues to promote and advertise its THE BOILING CRAB
17 restaurants.



18 14. The Boiling Crab has also used the TBC Marks extensively on the internet and,
19 as a result, the marks have developed a strong internet presence and recognition by consumers
20 who use the internet. The Boiling Crab is the registrant of various domain names incorporating,
21 in whole or in part, THE BOILING CRAB trademark, including <theboilingcrab.com> and
22 <boilingcrab.com>. The Boiling Crab owns and operates a website at these domain names in
23 order to promote and provide consumers with information concerning The Boiling Crab's chain
24 of THE BOILING CRAB restaurants. The Boiling Crab's website makes extensive use of the
25 TBC Marks and embodies part of the unique look-and-feel of THE BOILING CRAB dining
26 experience. A true and correct copy of the home page of The Boiling Crab's website at
27 www.theboilingcrab.com is attached hereto as Exhibit D.

15. In addition to owning and operating a THE BOILING CRAB website at www.theboilingcrab.com, The Boiling Crab also uses its TBC Marks extensively on the internet through the popular social networking sites Facebook (www.facebook.com/theboilingcrab), Twitter (twitter.com/theboilingcrab), YouTube (www.youtube.com/user/OfficialBoilingCrab) and Instagram (www.instagram.com/boilingcrab/), among others. In particular, The Boiling Crab maintains these active social media accounts in order to further promote its TBC Marks and to provide information about and promote its chain of THE BOILING CRAB restaurants.

16. Through The Boiling Crab's extensive use, marketing, branding, and promotion of its TBC Marks and THE BOILING CRAB chain of restaurants, the TBC Marks are recognized by the consuming public, and enjoy substantial recognition, goodwill, and association with THE BOILING CRAB restaurant chain. The public distinguishes The Boiling Crab's goods and services from those of others who offer the same or similar goods and services on the basis of its trademarks.

THE BOILING CRAB'S FEDERAL REGISTRATION OF THE TBC MARKS

17. The Boiling Crab is the owner of the following United States Trademark Registrations for the TBC Marks:

Mark	Reg. No.	Goods & Services
THE BOILING CRAB	3256219	Restaurant Services
	4174077	Restaurant Services
THE BOILING CRAB	4491054	Restaurant Services
	5374534	Restaurant Services

1 True and correct copies of The Boiling Crab's federal trademark registrations for these
2 marks are attached hereto as Exhibit E.

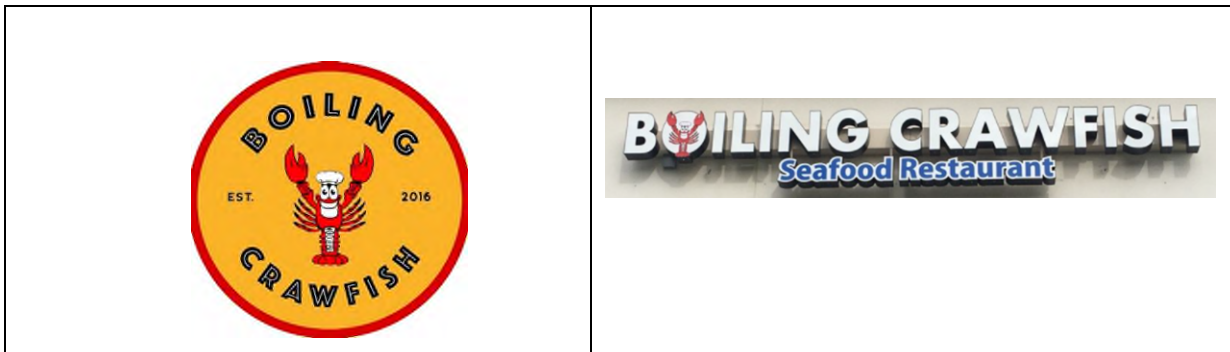
3 18. The Boiling Crab's federal registration Nos. 3256219, 4174077 and 4491054
4 have become incontestable within the meaning of Section 15 of the Lanham Act, 15 U.S.C. §
5 1065, and constitute conclusive evidence that the recited marks are valid and that The Boiling
6 Crab is entitled to exclusive use of the recited marks in commerce throughout the United States
7 for restaurant services and in connection with goods and services related thereto.

8 19. The Boiling Crab's federal registration No. 5374534 constitutes *prima facie*
9 evidence that the recited mark is are valid and that The Boiling Crab is entitled to exclusive use
10 of the recited mark in commerce throughout the United States for restaurant services and in
11 connection with goods and services related thereto.

12 DEFENDANTS' INFRINGEMENT OF THE TBC MARKS

13 20. On information and belief Defendants operate restaurants in Kent, Washington
14 and Puyallup, Washington under names and marks that comprise or contain BOILING
15 CRAWFISH.

16 21. Often, Defendants use the BOILING CRAWFISH mark together with a red
17 crawfish design. Illustrative examples of these uses are shown below:



22 22. Defendants also use with their restaurants a seafood concept and menu that
23 imitates The Boiling Crab's distinctive concept and menu, including a "Seafood by Pound"
24 concept, seasoning, and spice level selections.
25
26
27

23. On information and belief, Defendants' adoption and first use in connection with restaurant services of BOILING CRAWFISH marks, both with and without a crawfish design (collectively, the "Infringing Marks"), occurred long after The Boiling Crab's first use and/or registration of the TBC Marks in connection with restaurant services.

24. Defendants have also created an Internet website and various social media pages on platforms such as Facebook and Instagram using variations on the Infringing Marks, including at www.boilingcrawfishwa.com and www.boilingcrawfishkent.com and has been using these pages to promote and advertise restaurant services provided under the Infringing Marks.

25. On information and belief, at the time Defendants adopted and began offering restaurant services under the Infringing Marks, Defendants knew of The Boiling Crab, The Boiling Crab's restaurants and concept, The Boiling Crab's menus, as well as The Boiling Crab's superior rights in the TBC Marks, and knew or should have known that the unauthorized use of the Infringing Marks constitutes a violation of The Boiling Crab's rights in TBC Marks.

26. On information and belief, Defendants' adoption and use of the Infringing Marks was in bad faith and with the intention of capitalizing on The Boiling Crab's goodwill. Accordingly, Defendants' infringement of The Boiling Crab's trademarks is intentional and willful.

27. On information and belief, Defendants have recently renovated the interior of at least of their restaurants to adopt a décor that more closely resembles the interior décor of The Boiling Crab's restaurants, including but not limited to painting the walls a deep red-orange hue, the ceilings black, adding (faux) brick cladding on the bottom portion of the walls, and hanging large screen tvs and nautical themed items on the walls. True and correct copies of photos showing the interior of Defendants' restaurant before and after the renovation are attached hereto as Exhibit F.

28. The use of the Infringing Marks by Defendants are likely to cause confusion, mistake, and deception of consumers as to the source, quality, and nature of Defendants'

1 services and goods, thereby proximately causing injury to The Boiling Crab and its trademark
2 rights.

3 29. On information and belief, Defendants' imitation of The Boiling Crab's THE
4 BOILING CRAB restaurants through unauthorized use of the Infringing Marks has caused, and
5 will continue to cause, actual confusion among consumers.

6 **FIRST CLAIM FOR RELIEF**

7 **(Infringement of a Federally Registered Trademark)**

8 **15 U.S.C. § 1114(1)**

9 30. The Boiling Crab realleges and incorporates by reference the allegations in
10 paragraphs 1 through 29, as if set forth fully herein.

11 31. This claim is against Defendants for trademark infringement in violation of
12 Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

13 32. The Infringing Marks used by Defendants are reproductions, copies, or colorable
14 imitations of The Boiling Crab's registered TBC Marks.

15 33. Defendants have used and is using in interstate commerce, and has licensed
16 others to use, the Infringing Marks in connection with the sale, offering for sale, distribution, or
17 advertising of restaurant services and related goods and services, in such a way as is likely to
18 cause confusion, to cause mistake, and/or to deceive the consuming public.

19 34. The Boiling Crab never consented to or authorized Defendants' adoption or
20 commercial use of the Infringing Marks for any purpose. Defendants therefore have infringed
21 and is infringing The Boiling Crab's TBC Marks in violation of Section 32(1)(a) of the Lanham
22 Act, 15 U.S.C. § 1114(1)(a).

23 35. Upon information and belief, at all times relevant to this action, including when
24 Defendants first adopted the Infringing Marks and commenced commercial use of the same in
25 connection with restaurant services and related goods and services (collectively, the "Infringing
26 Goods and Services"), Defendants knew of The Boiling Crab's prior adoption and widespread
27 commercial use of The Boiling Crab's TBC Marks in connection with restaurant services and

1 related goods and services, and knew of the valuable goodwill and reputation acquired by The
2 Boiling Crab in connection with its trademarks. Accordingly, Defendants' infringement of The
3 Boiling Crab's TBC Marks is willful and deliberate.

4 36. The Boiling Crab has no control over the quality of Defendants' Infringing
5 Goods and Services and, because of the source confusion engendered by Defendants' willful
6 trademark infringement, The Boiling Crab's valuable goodwill in and to its federally registered
7 TBC Marks is being significantly harmed. Defendants' use of the Infringing Marks, in
8 imitation of The Boiling Crab's TBC Marks, has, on information and belief, caused confusion,
9 mistake, and deception to purchasers as to the source and origin of Defendants' goods and
10 services sold under the Infringing Marks.

11 37. Defendants' activities are intended, and are likely, to lead the public to
12 conclude, incorrectly, that Defendants' Infringing Goods and Services originate with, are
13 sponsored by, and/or are authorized by The Boiling Crab and its registered marks, to the
14 damage and harm of The Boiling Crab and the consuming public. Defendants' activities
15 constitute willful and deliberate infringement of The Boiling Crab's federally registered
16 trademarks in violation of the Lanham Act, including, but not limited to, 15 U.S.C. § 1114(1).
17 Accordingly, The Boiling Crab is entitled to recover Defendants' profits, together with The
18 Boiling Crab's damages, increased monetary recoveries as provided by the Lanham Act, as
19 well as costs of the action and reasonable attorneys' fees pursuant to Section 35(a) of the
20 Lanham Act, 15 U.S.C. § 1117(a).

21 38. Defendants' activities have caused and will continue to cause irreparable harm
22 to The Boiling Crab for which The Boiling Crab has no adequate remedy at law. Accordingly,
23 The Boiling Crab is entitled to preliminary and permanent injunctive relief pursuant to 15
24 U.S.C. § 1116(a).

25 39. The Boiling Crab also is entitled to, in addition to the other remedies described
26 herein, the cost of corrective advertising and a reasonable royalty as a result of Defendants'
27 infringement of The Boiling Crab's federally registered trademarks.

1 40. This is an exceptional case, further entitling The Boiling Crab to additional
2 remedies and also entitling The Boiling Crab to recover its attorneys' fees and costs incurred in
3 prosecuting this action and stopping Defendants' willful trademark infringement, pursuant to
4 15 U.S.C. § 1117.

5
6 **SECOND CLAIM FOR RELIEF**

7 **(Federal Unfair Competition)**

8 **15 U.S.C. § 1125(a)**

9 41. The Boiling Crab realleges and incorporates by reference the allegations in
10 paragraphs 1 through 40, as if set forth fully herein.

11 42. This claim is against Defendants for common law trademark infringement and
12 unfair competition, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

13 43. The Boiling Crab's TBC Marks are nonfunctional and inherently distinctive.
14 They have acquired secondary meaning in the eyes of the public.

15 44. Defendants' use and licensing of the Infringing Marks is likely to cause
16 confusion, mistake, and/or to deceive the consuming public as to the affiliation, connection,
17 and/or association between The Boiling Crab's THE BOILING CRAB restaurants and
18 Defendants' restaurants. Defendants' unauthorized use of the Infringing Marks also constitutes
19 unfair competition and false designation of origin of products and services.

20 45. On information and belief, at all times relevant to this action, including at the
21 time Defendants' first adopted and began using without authorization the Infringing Marks,
22 Defendants knew of The Boiling Crab's prior adoption and widespread commercial use of its
23 trademarks, and knew of the valuable goodwill and reputation acquired by The Boiling Crab in
24 connection with its trademarks, products and services. Defendants' infringement, unfair
25 competition and false designation of is therefore knowing, willful, and deliberate.

26 46. Defendants' activities have caused and will continue to cause irreparable harm
27 to The Boiling Crab for which The Boiling Crab has no adequate remedy at law.

THIRD CLAIM FOR RELIEF

(Unfair Competition Under State Law)

47. The Boiling Crab realleges and incorporates by reference the allegations in paragraphs 1 through 46, as if set forth fully herein.

48. Defendants' unauthorized use and licensing in commerce of the Infringing Marks as alleged herein is likely to deceive consumers as to the origin, source, sponsorship, or affiliation of Defendants' services, and is likely to cause consumers to believe, contrary to fact, that Defendants' services are sold, authorized, endorsed, or sponsored by The Boiling Crab, or that Defendants are in some way affiliated with or sponsored by The Boiling Crab. Defendants' conduct therefore constitutes trademark infringement, use of a false designation of origin and misleading description and representation of fact in violation of Washington common law.

49. Upon information and belief, Defendants have committed the foregoing acts of infringement with full knowledge of The Boiling Crab's prior rights in the TBC Marks and with the willful intent to cause confusion and trade on The Boiling Crab's goodwill.

50. Defendants' conduct is causing immediate and irreparable harm and injury to The Boiling Crab, and to its goodwill and reputation, and will continue to both damage The Boiling Crab and confuse the public unless enjoined by this court. The Boiling Crab has no adequate remedy at law.

51. The Boiling Crab is entitled to, among other relief, injunctive relief and an award of actual damages, Defendants' profits, enhanced damages and profits, reasonable attorneys' fees, and costs of the action under Washington common law, together with prejudgment and post-judgment interest.

FOURTH CLAIM FOR RELIEF

(Violation of the Washington Consumer Protection Act, RCW 19.86.010 *et seq.*)

52. The Boiling Crab realleges and incorporates by reference the preceding allegations set forth in Paragraphs 1 through 51, as if fully set forth herein.

53. Defendants' conduct as described above constitutes an unfair method of competition and an unfair or deceptive act or practice in the conduct of trade or commerce in violation of RCW 19.86.020 that has injured The Boiling Crab in its business or property.

54. The Boiling Crab accordingly brings this action pursuant to RCW 19.86.090 to enjoin further violations of RCW 19.86.020, and to recover actual damages sustained by it, to be trebled not to exceed \$25,000, together with costs and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, The Boiling Crab prays for entry of a judgment ordering and declaring:

1. That, preliminarily pending trial of this action and permanently thereafter, Defendants and its agents, servants, employees, successors, licensees and assignees, and all persons, firms, entities, partners, or corporations in active concert or participation with Defendants, are preliminarily and thereafter permanently enjoined from doing, threatening, or attempting to do or causing to be done, either directly or indirectly, by any means, method or device, any of the following acts:

(a) Directly or indirectly infringing, using, or displaying the TBC Marks or any mark confusingly similar thereto, including but not limited to the Infringing Marks, in any manner or for any purpose, including, but not limited to, in advertising, promoting, producing, distributing, selling, offering for sale, or giving away any services or products which infringe, use, or display The Boiling Crab's TBC Marks, or any marks confusingly similar thereto;

(b) Using any term that is likely to be confused with The Boiling Crab's TBC Marks;

(c) Falsely representing, misleading, or deceiving consumers into believing that services or products advertised, promoted, produced, distributed, sold, or offered by sale by Defendants originate from The Boiling Crab or its THE BOILING CRAB restaurants, or are sponsored, approved, licensed by, or associated with The Boiling Crab or its THE BOILING CRAB restaurants, or that Defendants or their services or products are in some way associated or affiliated with The Boiling Crab or its THE BOILING CRAB restaurants;

1 (e) Committing any other acts calculated to or that do unfairly compete with
2 The Boiling Crab in any manner;

3 (f) Filing or maintaining any business license, d/b/a, or similar document
4 using the TBC Marks or any mark confusingly similar thereto; and

5 (g) Registering, using, or trafficking in any trade name or domain name
6 containing or consisting of the TBC Marks or any mark confusingly similar thereto;

7 3. That Defendants be required to account for all profits derived by Defendants
8 from their trade, infringing conduct, unfair practices and competition, and for an order of
9 restitution of the entire amount of those profits, in amounts to be proven at trial, to The Boiling
10 Crab;

11 4. That Defendants be required to turn over to be impounded during the pendency
12 of this action all goods and other materials in their possession, custody, or control used or
13 involved in the trademark infringement complained of herein, and to turn over for destruction
14 all such goods and other materials, or in the alternative that all such items be subject to seizure;

15 5. That, in addition to being ordered to pay the lost profits attributable to the
16 infringing conduct complained of herein to The Boiling Crab, Defendants also be ordered to
17 pay their infringing profits as monetary damages and reasonable royalties, to be increased by
18 the Court by such amount as the Court deems to be just, together with The Boiling Crab's
19 damages, all of which, according to the circumstances of this case, should be increased and
20 trebled as provided by law, including 15 U.S.C. § 1117, and paid to The Boiling Crab;

21 6. That Defendants be ordered to pay exemplary or punitive damages to the extent
22 available under, and according to, law;

23 7. That Defendants be ordered to pay all of The Boiling Crab's attorneys' fees,
24 costs, and disbursements incurred in this suit, in bringing this action for the legal enforcement
25 of its trademark rights, and in connection with all efforts to stop Defendants' trademark
26 infringement and unfair competition;
27

8. That Defendants have willfully and deliberately committed acts of trademark infringement and unfair competition against The Boiling Crab;

9. That Defendants be ordered to pay interest according to law;

10. That Defendants be ordered to pay the costs of corrective advertising; and

11. For all such other, further, and different relief that this Court deems just and proper.

JURY DEMAND

The Boiling Crab hereby demands a trial by a jury of all issues so triable.

DATED this 5th day of March, 2021.

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